

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

LAS BRISAS CONDOMINIUM
HOMES CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

v.

Case No: 2:21-cv-41-SPC-MRM

EMPIRE INDEMNITY
INSURANCE COMPANY,

Defendant.

_____ /

OPINION AND ORDER¹

Before the Court is Defendant Empire Indemnity Insurance Company's Motion to Dismiss Count II of the Amended Complaint ([Doc. 62](#)), and Plaintiff Las Brisas Condominium Association, Inc.'s response ([Doc. 63](#)).²

This is an insurance bad faith dispute. The initial Complaint ([Doc. 4](#)) included one count for unfair claims practices under [Fla. Stat. §§ 624.155](#) and [626.9541](#). The Amended Complaint includes a separate count for punitive

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² Neither filing follows Local Rule 1.08's typography requirements. For efficiency reasons, the Court will not strike the papers. But the parties should not expect future leniency from the Court for this failure to follow the Local Rules.

damages. (Doc. 60). Empire moves to dismiss the punitive damages for failure to state a claim because the allegations are conclusory.

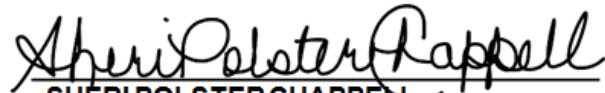
To start, punitive damages are a form of damages, not a claim for relief. See *Cohen v. Office Depot, Inc.*, 184 F.3d 1292, 1297-98 (11th Cir. 1999), *vacated in part on other grounds*, 204 F.3d 1069 (11th Cir. 2000) (“It is clear, however, that a request for punitive damages is not a ‘claim’ within the meaning of 8(a)(2); it is only part of the relief prayed for in the claim.” “Punitive damages are a remedy.”); Fed. R. Civ. P. 81(c) (“These rules apply to a civil action after it is removed from a state court.”). Thus, the Amended Complaint is improper in this regard. The Court will allow Las Brisas to file a second amended complaint to properly plead punitive damages as a form of damages under the unfair claims count.

Accordingly, it is now

ORDERED:

1. Defendant may file a second amended complaint by **December 2, 2021**. If Defendant does not file a second amended complaint, the case will proceed on Count I of the amended complaint (Doc. 60).
2. Defendant Empire Indemnity Insurance Company’s Motion to Dismiss Count II of the Amended Complaint (Doc. 62) is **denied**.

DONE and **ORDERED** in Fort Myers, Florida on November 22, 2021.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record